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A.J. Pietras
& ASSOCIATES
Patent & Trade Mark Attorney

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3 October 2005

IP Australia
Ground floor, Discovery House
47 Bowes Street
(PO Box 200)
Woden ACT 2606
AUSTRALIA

Our ref: P1407

re: **International Patent Application PCT/NZ2005/00039**
A Building Construction
HABODE IP LIMITED

We refer to the written opinion dated 11 July 2005 and now respond as follows.

A Demand for International Preliminary Examination is enclosed together with a payment options form in respect of the prescribed fees. We shall send a confirmation mail copy of all of the material included in this facsimile transmission, except for the payment options form so as to avoid a possible double debit.

We also enclose a replacement page 14 and a new page 15 in respect of claim amendments under article 34. We asked that examination be performed on the amended claim set. The nature of the amendments is set out in this letter together with comments on the material cited in the examiner's Written Opinion. It is understood that the Applicants do not need to send a copy of the Article 34 amendments to the International Bureau although that can be attended to if required.

Claims 1-13, and 16

Claim 1 of the present application is shown below. The parts of the claim which appear most relevant to the issues raised by the examiner are marked with bold text and underlining.

1. A building construction having a main portion, a roof portion, and a floor portion, the roof portion and the floor portion each being attached to the main portion by way of a respective pivot connection or connections, the building construction being formed such that the main portion, the roof portion and the floor portion can be arranged with respect to one another such that the building construction is substantially in the shape of a box-like freight

container in which the roof portion and/or the floor portion provide(s) structural integrity, the structural integrity being such that the building construction can be picked up by a crane, and/or arranged in a freight vehicle with a normally loaded freight container on top of it, in either case without causing structural damage to the building construction, and wherein the building construction can be, after being freighted to a desired site, assembled by swinging the roof portion out from the main portion, and by swinging the floor portion out from the main portion, not necessarily in that order, but in each case by way of the pivot connections, such that the roof and floor portions become at least part of the roof and floor of the building construction respectively when the building construction is installed on site.

The above high-lighted features of the invention allows the building construction to be manufactured off-site, for example off-shore in a low cost manufacturing facility, and then transported to the desired site for setup. This enables economic manufacture and transport without structural damage to the building is in transit. We submit that none of the specifications cited in the international search report or the written option disclose this aspect of the invention or render it obvious.

An advantage of the claimed arrangement is that it enables one to create a structure which does not require mid-container support posts which may add to manufacturing costs. Further, if mid-container support posts are a permanent fixture then they may undesirably break up open spaces within the building when erected.

Claims 2-13 are dependent on claim 1 and so if all issues with claim 1 are overcome then there should be no issues in respect of claims 2-13.

We comment on the documents cited by the examiner as follows.

Alleged Prior Publication

WO 93/20297 (to Shelter Technologies)

This specification discloses a portable shelter which is constructed according to shipping standards. The document does not mention a pivoting floor portion or a pivoting roof portion which provides sufficient structural integrity to withstand the stresses of crane lifting or the force of a normally loaded container stacked thereon. In fact the WO document does not discuss the problem of damage due to stacking or crane lifting at all and so is not in any way directed to the subject of claim 1. In the WO document it may for example be that the following combination of features provides sufficient structural integrity to withstand crane lifting and stacking:

- the "primary framing system" of fixed welded structural steel tube 41-46 (page 5-6), plus
- the cast steel corner fittings 31-37 (page 6), plus
- the wall panels 340 which swing up from the swinging floor panel (page 8).

However it is more likely that significant structural integrity is provided by way of the post-like inside supports 92 and 94 (see figures 3 and 4 and the discussion at page 7). If the swinging floor and roof sections were sufficient to provide structural integrity then there would be no need for the post supports 92. The post supports 92 and 94 are clearly positioned at medial parts of the side of the container because the description refers to supports 44 and 45 which are located at the corners. The presence of the post supports 92 and 94 in the cited WO construction means that more parts and thus more manufacturing input are required for structural integrity, and it also means that the interior space of the construction when finished is interrupted by such post supports. The present invention is not at all limited in that way. In light of the above we submit that there is nothing in the WO document which provides disclosure of a pivoting wall and/or floor portion which provides structural integrity as set out

in the Habode claim 1.

US 2002/0116878 (to Ciotti)

This document (Ciotti) discloses a portable building which can assume a container form for freighting, and can be subsequently assembled to give a habitable structure. Ciotti does not discuss the use of a pivoting floor or roof portion to provide sufficient structural integrity to enable crane lifting or container stacking. We submit that in the absence of such disclosure Ciotti does not anticipate the present invention. In the Ciotti arrangement it is unclear just what features provide structural integrity. It could be the "frame 33" referred to at paragraph 0027 and also at paragraph 0026 (especially if this is oversized). Indeed the Ciotti disclosure is not particularly detailed and it may be that the intention is to add central support posts as described for the Shelter Technologies specification discussed above. In summary we submit that there is simply insufficient disclosure in Ciotti for it to anticipate the Habode claim 1.

WO 98/002626 (to Kalinowski)

Kalinowski discloses a portable building similar to a standard shipping container. Page 9 describes the use of corner fitting connectors 26 which are shown in detail in figure 16. The first five lines of page 10 state that the connectors 26 *"form a rigid frame about collapsed building 20 to provide protection and to permit handling of building 20 in the same manner as a standard ISO or high cube shipping container"*. It is thus reasonable to conclude that the corner connectors 26 are needed before the construction has adequate structural integrity. There is no disclosure in Kalinowski that structural integrity sufficient to enable stacking or crane lifting is provided by pivoting floor or roof portions. In view of this we respectfully submit that Kalinowski fails to anticipate the subject of the Habode claim 1.

FR 2557620 (to le Poittevin)

The le Poittevin FR document appears to correspond to US 4,635,412 (which is in English). Le Poittevin discloses a portable building similar to a freight container. The unassembled transit-mode container has a *"ladder-girder 7"* which appears to impart stability and strength similar to that of a shipping container. In the US publication the ladder girder is mentioned at column 2 lines 1-16 and at column 3 lines 23-30. We submit that there is nothing in le Poittevin to suggest that pivoting floor or roof portions provide sufficient structural integrity to withstand crane lifting or container stacking. In view of this we submit that this specification fails to anticipate the present invention.

WO 97/047831 (to Bonnemazou)

We trust that the examiner's objection is based on the English abstract and drawings for this specification, although if that is not the case then please could the examiner direct us to the parts of the document on which the objection is based and we shall obtain a translation. The WO document appears to disclose a portable building in the shape of a parallelepiped. Exterior vertical side panels may be hinged to opposing elongated edges of the floor portion, and pivot during assembly to become floor extension sections which in turn contain inflatable structures to enlarge the capacity of the building. However there is no disclosure of pivoting roof or floor portions which give the requisite structural integrity for container stacking or crane lifting. In light of this we submit that Bonnemazou does not anticipate the subject of the Habode claim 1.

AU 1988/018477 (to Hines)

This document discloses a portable building system which may be formed as a shipping container conforming. Extension sections are mounted on hinges, but there is no indication of any special arrangement of the extension sections in the unassembled configuration being utilised to contribute to its structural integrity, in contrast to the subject of Habode's claim 1. More specifically, there is no disclosure in Hines that it is a swinging roof or floor portion which serves to provide enough structural integrity to withstand the weight of a normally loaded freight container or the stress of crane lifting, and such advantages are certainly not an inevitable consequence of the structure disclosed. Hines does describe twistlock sockets 12 (see page 4) and a container frame 22 (see page), and it may be that the combination of these provides structural integrity. We submit that in light of the above the Hines specification does not anticipate the Habode invention.

DE 3433560 (to Behrmann)

This document appears to correspond to US 4,546,578, which is in English. The document discloses a portable building comprising two side containers pivotally attached to a central container in a nested arrangement for transportation. The side containers swing out from the central container. As such, the roof(s) and/or floor(s) of the extension from the central container are separate therefrom and provide no structural integrity thereto in the transportation configuration of this portable building. We submit that there is no disclosure of a swinging roof or floor portion which serves to provide enough structural integrity to withstand the weight of a normally loaded freight container or the stress of crane lifting, and such advantages are certainly not an inevitable consequence of the structure disclosed. Indeed it would appear from the general description and the drawings of Behrmann that the arrangement is not at all suited to container stacking or crane lifting.

Alleged Obviousness

We respectfully submit that there is no disclosure in any of the above specifications that would render the building construction of the present invention obvious. We say this because, among other things, there is no discussion in any of the cited documents to draw a reader's attention to the possibility of enhancing the structural integrity of the unassembled container in the manner claimed. There is certainly no motivation to combine or modify any of the arrangements described in the material cited in the search report to give the invention as claimed. None of the cited art touches on or alludes to the use of a pivoting container wall to provide a floor or roof while at the same time, in the pre-erected disposition, providing crane lifting or container stacking strength.

Claims 14 & 16

It is understood that the only prior art cited against claim 14 is FR 2557620 (le Poittevin), and that the same citation applies to claim 16 in the context of that claim reading back on claim 14. It is proposed to amend claim 14 as follows (a replacement page is enclosed):

14. A building construction having a main portion, a roof portion, and a floor portion, the roof portion and the floor portion each being attached to the main portion by way of a respective pivot connection or connections, the building construction being formed such that the main portion, the roof portion, and the floor portion can be arranged with respect to one another such that the building construction is substantially in a disassembled box-like shape

which can be freighted to a desired site, the building construction being formed such that when it is on site it can be assembled by swinging the roof portion out from the main portion, and by swinging the floor portion out from the main portion, not necessarily in that order, but in each case by way of the respective pivot connections, such that the roof and floor portions become at least part of the roof and floor of the building construction respectively when the building construction is installed on site, the building construction being formed such that when the roof portion is swung out to an installed position by way of its pivot connection or connections the roof portion is angled upwards away from the main portion so that parts of the roof portion most remote from the main portion are substantially higher than parts of the roof portion immediately adjacent the main portion, and wherein the position of contact between the roof portion and the main portion is inherently covered by the roof portion to substantially assist in resisting rain water entering the building construction when the building construction is completely installed.

We submit that le Poittevin does not anticipate claim 14 as above because in le Poittevin the roof angles downwards as it proceeds out from the central part of the structure. Le Poittevin thus does not allow as great a ceiling height as the present invention. The le Poittevin folding house requires significantly more moving parts and interrelationships to create a roof structure. The present invention allows for a much more straight forward construction and method of assembly. In terms of obviousness we submit that there is nothing in le Poittevin which would lead one to the Habode invention as claimed. Indeed le Poittevin teaches away from the present invention because it is focused on a roof structure which angles downwardly as it extends away from the central part of the structure.

In light of the above narrowing amendment to claim 14 we propose to add new claim 17, which reads as follows:

17. A building construction according to claim 14, formed sufficient for ISO certification as a shipping container for use on container ships when in the disassembled box-like shape, and wherein the roof portion provides an outside wall of the box-like shape, the construction being such that in order for assembly to occur the roof portion must be swung out from the main portion before floor portion.

We look forward to your reply.

Yours sincerely
A.J. PIETRAS & ASSOCIATES



Anthony (Tony) Josef Pietras

disassembled box-like shape which can be freighted to a desired site, the building construction being formed such that when it is on site it can be assembled by swinging the roof portion out from the main portion, and by swinging the floor portion out from the main portion, not necessarily in that order, but in each case by way of the respective pivot connections, such that the roof and floor portions become at least part of the roof and floor of the building construction respectively when the building construction is installed on site, the building construction being formed such that when the roof portion is swung out to an installed position by way of its pivot connection or connections the roof portion is angled upwards away from the main portion so that parts of the roof portion most remote from the main portion are substantially higher than parts of the roof portion immediately adjacent the main portion, and wherein the position of contact between the roof portion and the main portion is inherently covered by the roof portion to substantially assist in resisting rain water entering the building construction when the building construction is completely installed.

15

15. A building construction substantially as herein described with reference to figures 1-10.

16. A building construction according to any one of the preceding claims, wherein the building construction is certified as a shipping container for use on container ships.

17. A building construction according to claim 14, formed sufficient for ISO certification as a shipping container for use on container ships when in the disassembled box-like shape, and wherein the roof portion provides an outside wall of

the box-like shape, the construction being such that in order for assembly to occur the roof portion must be swung out from the main portion before floor portion.

The demand must be filed directly with the competent International Preliminary Examining Authority or, if two or more Authorities are competent, with the one chosen by the applicant. The full name or two-letter code of that Authority may be indicated by the applicant on the line below:

IPEA/ AU (Australia)

PCT

CHAPTER II

DEMAND

under Article 31 of the Patent Cooperation Treaty:
The undersigned requests that the international application specified below be the subject of international preliminary examination according to the Patent Cooperation Treaty.

For International Preliminary Examining Authority use only	
Identification of IPEA	Date of receipt of DEMAND
Box No. I IDENTIFICATION OF THE INTERNATIONAL APPLICATION	
Applicant's or agent's file reference P1407 PCT	
International application No. PCT/NZ2005/00039	International filing date (day month year) 8 March 2005
(Earliest) Priority date (day month year) 28 April 2004	
Title of invention A BUILDING CONSTRUCTION	
Box No. II APPLICANT(S)	
Name and address: (Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)	
HABODE IP LIMITED 69 Rutherford Street Lower Hutt 6009 New Zealand	
Telephone No.	
Facsimile No.	
Teleprinter No.	
Applicant's registration No. with the Office	
State (that is, country) of nationality: New Zealand	State (that is, country) of residence: New Zealand
Name and address: (Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)	
GIBSON, Rodney Mark Old Ferry Building Waterloo Quay Warf Wellington 6001 New Zealand	
State (that is, country) of nationality: New Zealand	State (that is, country) of residence: New Zealand
Name and address: (Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)	
State (that is, country) of nationality:	State (that is, country) of residence:
<input type="checkbox"/> Further applicants are indicated on a continuation sheet.	

Box No. III AGENT OR COMMON REPRESENTATIVE; OR ADDRESS FOR CORRESPONDENCE

The following person is ☒ agent ☐ common representative
 and ☒ has been appointed earlier and represents the applicant(s) also for international preliminary examination.
☐ is hereby appointed and any earlier appointment of (an) agent(s)/common representative is hereby revoked.
☐ is hereby appointed, specifically for the procedure before the International Preliminary Examining Authority, in addition to the agent(s)/common representative appointed earlier.

Name and address: *(Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)*

PIETRAS, Anthony (Tony) Josef
 A.J. Pietras & Associates
 Gibson Sheat Centre, 1 Margaret street
 (PO Box 30173)
 Lower hutt 6009
 New Zealand

Telephone No.

+64-4-5661024

Facsimile No.

+64-4-5661028

Teleprinter No.

Agent's registration No. with the Office

☐ Address for correspondence: Mark this check-box where no agent or common representative is/has been appointed and the space above is used instead to indicate a special address to which correspondence should be sent.

Box No. IV BASIS FOR INTERNATIONAL PRELIMINARY EXAMINATION**Statement concerning amendments:***

1. The applicant wishes the international preliminary examination to start on the basis of:

- ☐ the international application as originally filed
 the description ☐ as originally filed
☐ as amended under Article 34
 the claims ☐ as originally filed
☐ as amended under Article 19 (together with any accompanying statement)
☒ as amended under Article 34
 the drawings ☐ as originally filed
☐ as amended under Article 34

2. ☐ The applicant wishes any amendment to the claims under Article 19 to be considered as reversed.
 3. ☐ Where the IPEA wishes to start the international preliminary examination at the same time as the international search in accordance with Rule 69.1(b), the applicant requests the IPEA to **postpone** the start of the international preliminary examination until the expiration of the applicable time limit under Rule 69.1(d).
 4. ☐ The applicant expressly wishes the international preliminary examination to **start earlier** than at the expiration of the applicable time limit under Rule 54bis.1(a).

* Where no check-box is marked, international preliminary examination will start on the basis of the international application as originally filed or, where a copy of amendments to the claims under Article 19 and/or amendments of the international application under Article 34 are received by the International Preliminary Examining Authority before it has begun to draw up a written opinion or the international preliminary examination report, as so amended.

Language for the purposes of international preliminary examination: English

- ☒ which is the language in which the international application was filed.
☐ which is the language of a translation furnished for the purposes of international search.
☐ which is the language of publication of the international application.
☐ which is the language of the translation (to be) furnished for the purposes of international preliminary examination.

Box No. V ELECTION OF STATES

The filing of this demand constitutes the election of all Contracting States which are designated and are bound by Chapter II of the PCT.

Box No. VI CHECK LIST

The demand is accompanied by the following elements, in the language referred to in Box No. IV, for the purposes of international preliminary examination:

- | | | | |
|--|---|-------|--------|
| 1. translation of international application | : | _____ | sheets |
| 2. amendments under Article 34 | : | _____ | sheets |
| 3. copy (or, where required, translation) of amendments under Article 19 | : | 2 | sheets |
| 4. copy (or, where required, translation) of statement under Article 19 | : | _____ | sheets |
| 5. letter | : | 5 | sheets |
| 6. other (<i>specify</i>) | : | _____ | sheets |

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received	not received
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<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
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<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

The demand is also accompanied by the item(s) marked below:

- | | |
|--|---|
| 1. <input checked="" type="checkbox"/> fee calculation sheet | 5. <input type="checkbox"/> statement explaining lack of signature |
| 2. <input type="checkbox"/> original separate power of attorney | 6. <input type="checkbox"/> sequence listing in electronic form |
| 3. <input type="checkbox"/> original general power of attorney | 7. <input type="checkbox"/> tables in electronic form related to a sequence listing |
| 4. <input type="checkbox"/> copy of general power of attorney: reference number, if any: | 8. <input type="checkbox"/> other (<i>specify</i>): |

Box No. VII SIGNATURE OF APPLICANT, AGENT OR COMMON REPRESENTATIVE

Next to each signature, indicate the name of the person signing and the capacity in which the person signs (if such capacity is not obvious from reading the demand).


PIETRAS, Anthony (Tony) Josef - agent

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1. Date of actual receipt of DEMAND:

2. Adjusted date of receipt of demand due to CORRECTIONS under Rule 60.1(b):

- | | |
|--|--|
| 3. <input type="checkbox"/> The date of receipt of the demand is AFTER the expiration of 19 months from the priority date and item 4 or 5. below, does not apply.
<input type="checkbox"/> The applicant has been informed accordingly. | 6. <input type="checkbox"/> The date of receipt of the demand is AFTER the expiration of the time limit under Rule 54bis.1(a) and item 7 or 8. below, does not apply. |
| 4. <input type="checkbox"/> The date of receipt of the demand is WITHIN the time limit of 19 months from the priority date as extended by virtue of Rule 80.5. | 7. <input type="checkbox"/> The date of receipt of the demand is WITHIN the time limit under Rule 54bis.1(a) as extended by virtue of Rule 80.5. |
| 5. <input type="checkbox"/> Although the date of receipt of the demand is after the expiration of 19 months from the priority date, the delay in arrival is EXCUSED pursuant to Rule 82. | 8. <input type="checkbox"/> Although the date of receipt of the demand is after the expiration of the time limit under Rule 54bis.1(a), the delay in arrival is EXCUSED pursuant to Rule 82. |

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Demand received from IPEA on:

PCT

FEE CALCULATION SHEET

Annex to the Demand

International application No. PCT/NZ2005/00039	For International Preliminary Examining Authority use only
Applicant's or agent's file reference P1407 PCT	Date stamp of the IPEA
Applicant HABODE IP LIMITED	
CALCULATION OF PRESCRIBED FEES	
1. Preliminary examination fee	<div style="border: 1px solid black; padding: 2px; display: inline-block;">550</div> <div style="border: 1px solid black; padding: 2px; display: inline-block; width: 20px; text-align: center;">P</div>
2. Handling fee (<i>Applicants from certain States are entitled to a reduction of 75% of the handling fee. Where the applicant is (or all applicants are) so entitled, the amount to be entered at H is 25% of the handling fee.</i>)	<div style="border: 1px solid black; padding: 2px; display: inline-block;">218</div> <div style="border: 1px solid black; padding: 2px; display: inline-block; width: 20px; text-align: center;">H</div>
3. Total of prescribed fees Add the amounts entered at P and H and enter total in the TOTAL box	<div style="border: 1px solid black; padding: 2px; display: inline-block;">768</div>
<div style="border: 1px solid black; padding: 2px; display: inline-block;">TOTAL</div>	
MODE OF PAYMENT	
<input type="checkbox"/> authorization to charge deposit account with the IPEA (see below)	<input type="checkbox"/> cash
<input type="checkbox"/> cheque	<input type="checkbox"/> revenue stamps
<input type="checkbox"/> postal money order	<input type="checkbox"/> coupons
<input type="checkbox"/> bank draft	<input checked="" type="checkbox"/> other (<i>specify</i>): credit card payment options form
AUTHORIZATION TO CHARGE (OR CREDIT) DEPOSIT ACCOUNT <i>(This mode of payment may not be available at all IPEAs)</i>	
<input type="checkbox"/> Authorization to charge the total fees indicated above.	IPEA/ _____
<input type="checkbox"/> (<i>This check-box may be marked only if the conditions for deposit accounts of the IPEA so permit</i>) Authorization to charge any deficiency or credit any overpayment in the total fees indicated above.	Deposit Account No.: _____
	Date: _____
	Name: _____
	Signature: _____